

## Hoffman, Jamie

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**From:** Smith.Aaron <Aaron.Smith@cic.gc.ca>  
**Sent:** February 24, 2014 10:55 AM  
**To:** Ouellet, Simon  
**Subject:** RE: Cessation policy

Good morning Simon

I was looking at Murray's piece below. It stops at 4. Is there more to this piece than what is below? If so, could you please send it to me. Thanks in advance. Aaron

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**From:** Ouellet, Simon [mailto:Simon.Ouellet@cbsa-asfc.gc.ca]  
**Sent:** February 20, 2014 11:38 AM  
**To:** Smith.Aaron  
**Subject:** FW: Cessation policy

Hi Aaron,

I have met with Murray yesterday on cessation / vacation in Vancouver and told me he had started working on a policy at some point. You can see below his first draft that you should consider including in your policy. Any idea as to when we can expect the second draft? .

Thanks!

Simon

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**From:** Wilkinson, Murray  
**Sent:** February 19, 2014 1:30 PM  
**To:** Ouellet, Simon; Ouellet, Simon  
**Subject:** FW:

Simon at one point I just starting writing and pasting a few things together. I did not have enough time that afternoon to finish but I thought I could share what I did get down. If I can help get a policy paper together I am willing to assist.

Cessation Policy

Introduction

Refugee Protection is one of the cornerstones of Canada's Immigration Policy as reflected in the Immigration and Refugee Protection Act (IRPA). At the same time that Canada recognizes the need to grant refugee protection Canada also recognizes that it can be a transient status. People who have been found to be refugees can conclude that the situation in their homeland is not likely to improve in the foreseeable future and may opt to have the full protection of Canada by assuming Canadian citizenship. In other situations many refugees are only seeking a temporary safe haven and intend to re-avail themselves of their former nationality. In these situations they may

only elect to become permanent residents while waiting for the opportunity to return to their homeland. Canada's refugee protection is flexible to accommodate both situations. Recognizing that refugee protection can be temporary recognizes that convention refugee status can be lost.

The United Nations in drafting the convention and preparing a guide book for member nations to follow addressed this issue and put in place grounds for loss of status. These are referred to as grounds of cessation. The cessation grounds are negative in nature and are strictly limited to the grounds enumerated in the Convention and reflected in the IRPA. The grounds for cessation in IRPA are section 108(1)(a) through (e).

The policy will provide guidance to officers of CIC and CBSA in when and how a person's refugee status should be ceased. The overall intent of this is that people who no longer need Canada's protection should not hold convention refugee status.

The loss of convention refugee status has potentially serious consequences and is a decision that can only be taken after offering the person concerned a reasonable but not unlimited opportunity to explain their actions and the events that occurred. It is important to remember each case should be considered on its own merits and the evidence to be considered for each person and each ground of cessation can be very different. This will be addressed in detail as each section of A108 is considered.

It is fundamental that cessation cannot apply to a person who is a Canadian citizen.

## The Cessation Grounds

A108 says:

108. (1) A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:

- (a) the person has voluntarily reavailed themselves of the protection of their country of nationality;
- (b) the person has voluntarily reacquired their nationality;
- (c) the person has acquired a new nationality and enjoys the protection of the country of that new nationality;
- (d) the person has voluntarily become re-established in the country that the person left or remained outside of and in respect of which the person claimed refugee protection in Canada; or
- (e) the reasons for which the person sought refugee protection have ceased to exist.

Marginal note: Cessation of refugee protection

(2) On application by the Minister, the Refugee Protection Division may determine that refugee protection referred to in subsection 95(1) has ceased for any of the reasons described in subsection (1).

Marginal note: Effect of decision

(3) If the application is allowed, the claim of the person is deemed to be rejected.

Marginal note: Exception

(4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.

## The Individual Clauses

1. 108(1)(a) the person has voluntarily reavailed themselves of the protection of their country of nationality

The UNHCR handbook provides the following comments on the meaning of revailing oneself of their country of nationality :

118. This cessation clause refers to a refugee possessing a nationality who remains outside the country of his nationality. (The situation of a refugee who has actually returned to the country of his nationality is governed by the fourth cessation clause, which speaks of a person having “re-established” himself in that country.) A refugee who has voluntarily re-availed himself of national protection is no longer in need of international protection. He has demonstrated that he is no longer “unable or unwilling to avail himself of the protection of the country of his nationality”.

119. This cessation clause implies three requirements:

(a) voluntariness: the refugee must act voluntarily;

(b) intention: the refugee must intend by his action to re-avail himself of the protection of the country of his nationality;

(c) re-availment: the refugee must actually obtain such protection.

120. If the refugee does not act voluntarily, he will not cease to be a refugee. If he is instructed by an authority, e.g. of his country of residence, to perform against his will an act that could be interpreted as a re-availment of the protection of the country of his nationality, such as applying to his Consulate for a national passport, he will not cease to be a refugee merely because he obeys such an instruction. He may also be constrained, by circumstances beyond his control, to have recourse to a measure of protection from his country of nationality. He may, for instance, need to apply for a divorce in his home country because no other divorce may have the necessary international recognition. Such an act cannot be considered to be a “voluntary re-availment of protection” and will not deprive a person of refugee status.

121. In determining whether refugee status is lost in these circumstances, a distinction should be drawn between actual re-availment of protection and occasional and incidental contacts with the national authorities. If a refugee applies for and obtains a national passport or its renewal, it will, in the absence of proof to the contrary, be presumed that he intends to avail himself of the protection of the country of his nationality. On the other hand, the acquisition of documents from the national authorities, for which non-nationals would likewise have to apply – such as a birth or marriage certificate – or similar services, cannot be regarded as a re-availment of protection.

122. A refugee requesting protection from the authorities of the country of his nationality has only “re-availed” himself of that protection when his request has actually been granted. The most frequent case of “re-availment of protection” will be where the refugee wishes to return to his country of nationality. He will not cease to be a refugee merely by applying for repatriation. On the other hand, obtaining an entry permit or a national passport for the purposes of returning will, in the absence of proof to the contrary, be considered as terminating refugee status. 16 This does not, however, preclude assistance being given to the repatriant-also by UNHCR – in order to facilitate his return.

123. A refugee may have voluntarily obtained a national passport, intending either to avail himself of the protection of his country of origin while staying outside that country, or to return to that country. As stated above, with the receipt of such a document he normally ceases to be a refugee. If he subsequently renounces either intention, his refugee status will need to be determined afresh. He will need to explain why he changed his mind, and to show that there has been no basic change in the conditions that originally made him a refugee.

124. Obtaining a national passport or an extension of its validity may, under certain exceptional conditions, not involve termination of refugee status (see paragraph 120 above). This could for example be the case where the holder of a national passport is not permitted to return to the country of his nationality without specific permission.

125. Where a refugee visits his former home country not with a national passport but, for example, with a travel document issued by his country of residence, he has been considered by certain States to have re-availed himself of the protection of his former home country and to have lost his refugee status under the present cessation clause.

Cases of this kind should, however, be judged on their individual merits. Visiting an old or sick parent will have a different bearing on the refugee's relation to his former home country than regular visits to that country spent on holidays or for the purpose of establishing business relations.

The important elements of 108(1)(a) is that to avail oneself of the protection of their country of nationality does not require that the person concerned actually entered the country of nationality. The person concerned's actions alone can bring him within the gamut of A108(1)(c). Further the Handbook considers that a person who obtains a passport has created a prima facie case that they have availed themselves of the protection of their country of nationality.

Guidelines to be considered.

After a certain point in time a person's status as a permanent resident based on the original finding of convention refugee status creates an obligation of commitment on the part of the person concerned to Canada. This would exist when an individual does not take any action for a number of years that would without looking behind it create a prima facie case. The time frame is somewhat arbitrary but it also must be reasonable in terms of commitment. For the purpose of this policy the time frame is to be set at 10 years from the date of obtaining permanent residence in Canada. However if a Convention Refugee obtains a passport from his/her country of nationality, travels internationally on this passport, returns to their country of nationality or avails themselves of the normal diplomatic services of his/her country of nationality at any time in the ten year period then the obligation is on the person concerned to demonstrate that they have and continue to make a commitment to Canada. This can be achieved through employment history, community contribution, filing of tax returns, family in Canada, ownership of property, membership in community organizations, combined with the reason for their action and the nature thereof. This will be further elaborated as we discuss the three points raised in paragraph 118 of the Handbook.

In considering an act of cessation and in particular in looking at A108(1)(a) it is important to focus on the elements that are relevant to this section. These are:

- i. The convention refugee's actions must be voluntary
- ii. The refugee must intend by his action to re-avail himself of the protection of the country of his nationality
- iii. The refugee must actually obtain such protection

The assessment of elements i and ii involve a considerable amount of discretion on the part of the officer.

The fact the person concerned applies for and acquires a passport is considered by the Handbook to create a prima facie case for cessation. However there are situations where such an act would not be voluntary. Take for example a child in a life threatening situation; a parent will do anything to be there for that child and the actions taken could place the parent in harms way but they would still do this. This no longer is a voluntary action. One needs to consider what causes the person to take the steps they have and what evidence they have that these events actually occurred. The absence of supporting evidence should rarely be adequate to support a claim of a life threatening situation to a family member. It is equally important that the event be one that prompts an involuntary response. A non-life threatening medical situation would not make the decision to seek and obtain a passport or travel to the country of nationality non-voluntary. As for example returning to the country of nationality for a funeral, work, holidays or to complete some transaction that could be handled by another representative such as a lawyer or accountant would not amount to a non-voluntary activity.

To cease status The Convention Refugee must intend to re-avail himself of the protection of the country of nationality is most often demonstrated by the actions taken and should therefore be assessed by the individuals actions and not their statements. When one travels on their passport and presents it to the officials of another country they are in effect requesting that country's authorities to respect the privileges and rights of a citizen of the passport holder. When one enters their country of nationality on the passport of that country they directly identify themselves as a citizen and request entry based on their right as a citizen. Whereas a person who uses agents and bribery though illegal acts to gain entry to their country of nationality would suggest there is no intent to seek the protection of that country. Further this must be considered in terms of the purpose of returning and the length of stay should be consistent with the objective. It could be acceptable to spend two weeks with a dying relative

whereas it would be inconsistent with the objective to remain in the country of nationality for six months after the individual passed away.

The third element of re-availment is the demonstratable physical act. If an individual applies for a passport of a re-entry visa they must actually receive the passport or visa to fall within 108(1)(a). Other activities such as presenting the passport to an official of a foreign government or in some way identifying as a citizen of the original country of nationality to facilitate entry or receive a benefit would amount to an action that demonstrates the obtaining of actual state protection.

2. 108(1)(b) – The person has voluntarily reacquired their nationality.
3. The person has acquired a new nationality and enjoys the protection of the country of that new nationality.

This is not something an officer should see often. This is a situation where a person obtains citizenship of a third country. This subsection does not leave itself open to include people who obtain permanent residence in another country, even in a country where permanent residence includes most of the protections a national would be entitled to. Evidence should be obtained to confirm citizenship such as a passport or citizenship certificate. The process of cessation cannot be offset by other factors. Cessation of refugee status is based on the person concerned no longer needing protection as he has voluntarily obtained citizenship in another country and therefore has the protection of the new country of nationality.

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## Hoffman, Jamie

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**From:** Fraser.Anik <Anik.Fraser@cic.gc.ca>  
**Sent:** March 19, 2014 04:48 PM  
**To:** Woods, Warren: CIC / CIC; Matern, Frederick: CIC / CIC; Giguere, Sandrine-Anne: CIC / CIC; Lasonde, Guylaine: CIC / CIC; McNair, Sean: CIC / CIC; Richer, Katherine; Morton, Luke: CIC / CIC; Colaianni, Anna: JUS / JUS; Samson, Neal: JUS / JUS; Robertson, Jeff; Ouellet, Simon; Rosenhek, Marissa: CIC / CIC; Marsaw, Aaron: JUS / JUS  
**Cc:** Latimer, Warren: CIC / CIC; Koo, Frances: CIC / CIC  
**Subject:** FW: URGENT -

Hi all,

Thanks in advance for any help!

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Thanks so much for your

help. Cheers. Warren

*Warren Latimer*

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